



FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FEDERAL INSURANCE MITIGATION ADMINISTRATION (FIMA) APPEAL DECISION

FEMA Flood Insurance Appeal Decision #A6

SUMMARY

The policyholder appealed the flood insurance carrier’s (hereinafter “insurer”) denial of a claim under the Standard Flood Insurance Policy (SFIP)¹ for damages to their property arising in February 2020.

The policyholder files this appeal under 44 C.F.R. § 62.20. The appeals process is available after the insurer issues a written denial, in whole or in part, of the policyholder’s claim.²

After reviewing the issues, evidence, and relevant authorities, FEMA overturns the insurer’s decision.

BACKGROUND

COVERAGE

The policyholder insures property under the SFIP Dwelling Form. At the time of loss, the policyholder had \$250,000 of building coverage and \$100,000 of personal property coverage.

EVENT AND CLAIM FACTS

Heavy rainfall forced the Tennessee Valley Authority to release water contained behind Pickwick Dam on the Tennessee River.³ The release of water elevated the river to 388.72 feet, creating a major flood.⁴

The policyholder reported the loss to the insurer and the insurer assigned an adjuster to inspect the property. The adjuster inspected the property in February 2020, and noted the insured building had completely collapsed down the slope of land adjacent the Tennessee River. Because the building was situated above the river by more than 150 feet, surface floodwater had not reached the land immediately around the insured building at the described location. The adjuster requested the insurer to obtain a qualified professional to verify the loss. The insurer retained an engineer to inspect the property.

¹ See 44 C.F.R. § 61.13 (2019); Dwelling Form available at 44 C.F.R. pt. 61 App. A(1) [hereinafter “SFIP”].

² The policyholder’s appeal and related documents concerning the appeal, claim, or policy are on file with FEMA, Federal Insurance and Mitigation Administration, Federal Insurance Directorate, Policyholder Services Division, Appeals Branch [hereinafter “Appeal File”].

³ See News Channel 3, WREG Memphis, “Hardin County Residents Concerned as Tennessee River Rises,” available at <https://wreg.com/news/hardin-county-residents-concerned-as-tennessee-river-rises/>.

⁴ See National Weather Service, “Advanced Hydrologic Prediction Service, Tennessee River at Savannah,” available at <https://water.weather.gov/ahps2/hydrograph.php?gage=savt1&wfo=meg>.

In March 2020, a state licensed engineer inspected the property and concluded significant river elevations compromised the soils supporting the foundation of the building. The engineer found that soil under the building no longer had enough bearing capacity and the building collapsed.⁵

In a letter dated July 2020, the insurer denied coverage from damages citing no direct loss by or from flood. The insurer explained the policyholder's parcel of land did not extend to the river's edge and that the flood was contained to the river's banks, well below the described location.

The policyholder appealed the denial to FEMA in September 2020. In support of their appeal, the policyholder provides a letter, a report from an engineer retained by the homeowner's insurance company, and an engineering report given to the policyholder by the owner of a neighboring property.

ISSUES

The policyholder contests the denial of their claim stating the Tennessee River was in a state of major flood when damage to their property occurred. The policyholder also states their neighbor's property suffered similar damage and that their claim was approved by their insurer.

RULES

The insurer agrees to pay the policyholder for direct physical loss by or from flood to covered property, provided the policyholder complies with all terms and conditions of the SFIP.⁶

The SFIP defines a flood as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land or two or more properties (at least one of which is the policyholder's property) from overflow of inland or tidal waters, unusual and rapid accumulation or runoff of surface waters from any source, or mudflow.⁷ A flood also means the collapse or subsidence of land along the shore of a lake or a similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood from the overflow of inland or tidal waters.⁸

The SFIP does not insure loss to property caused directly by earth movement, even if the earth movement is caused by flood. However, the SFIP does pay for losses from mudflow and land subsidence as a result of erosion that is specifically covered under the definition of flood.⁹

⁵ See Appeal File, Engineering Report.

⁶ See SFIP (I), (II)(B)(12).

⁷ See SFIP (II)(A)(1).

⁸ See SFIP (II)(A)(2).

⁹ See SFIP (V)(C)(6).

ANALYSIS

The policyholder contests the denial of their claim stating the river below their property was at a state of flood when their dwelling was destroyed.

The insurer agrees to pay the policyholder for insured property damaged by direct physical loss by or from flood. The SFIP defines a flood as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land, or partial or complete inundation of the two or more properties, one of which is the policyholder's property. The SFIP also defines flood as the collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood from the overflow of inland or tidal waters. The SFIP excludes loss to property caused by earth movement, even if earth movement is caused by flood, except when the loss is caused by mudflow or land subsidence as a result of erosion that is specifically covered under the SFIP's definition of flood.

FEMA confirms that at the time of loss the Tennessee River experienced a flood and was nearing or surpassed its major flood stage of 388 feet. The National Weather Service defines a major flood stage as extensive inundation of structures and roads.¹⁰ The National Weather Service considers the normal river level for the Tennessee River at Savannah is at or below 361 feet.¹¹ Because of the water release from Pickwick Dam, the river level rose 27 feet of this level, flooding normally dry land up, down, and across the river from the insured building. Photographs available from media document the flood and its magnitude.¹² FEMA's review finds that the complete inundation of two or more acres of normally dry land occurred, meeting the SFIP's first definition of flood.

The insurer's engineer found that land underneath the building was compromised by scour¹³ from currents of water created during the flood. The insurer's engineer finds that in February 2020 the building's support soil and the building itself collapsed. At time the building and the building's support soil collapsed, the Tennessee River was at flood, nearing or surpassing its major flood stage of 388 feet. Based on these facts, FEMA finds that a flood, as defined in the SFIP's second definition of flood, occurred on the claimed date of loss.

FEMA's review concludes a direct physical loss by or from flood to insured property occurred. Here, currents of floodwater caused sudden erosion and the collapse of land, which damaged the insured property. The documented events of the loss to the insured property meets the exception for coverage under the SFIP's exclusion of earth movement.

FEMA's review notes that while erosion along the river may have previously affected the land near or at the described location, there is no evidence presented in the claim file that supports a pre-existing condition of damage to the building caused by gradual erosion or from any previous episodic erosion

¹⁰ National Weather Service, High Water Level Terminology, *available at* <https://www.weather.gov/apr/c/terminology> .

¹¹ The gauge at Savannah, Tennessee is the closest and most relevant gauge to the insured building.

¹² See "Drone Captures the Devastating Destruction Caused by Massive Landslide in Tennessee that Left Roads Crumbling and Homes Destroyed," *available at* <https://www.dailymail.co.uk/news/article-8026923/Drone-captures-devastating-destruction-caused-massive-landslide-Tennessee.html>.

¹³ Merriam-Webster sixth definition of scour: to clear, dig, or remove by or as if by a powerful current of water.

event, such as during the major flood event the previous year.¹⁴ Evidence of unrepaired loss to the insured building from any cause would justify a reduction in the value of the building, which would be applicable to the policyholder's flood claim.

Because the condition of flood as defined by the SFIP existed at the described location, FEMA overturns the insurer's denial. FEMA's review finds the building suffered direct physical loss by or from flood on the claimed date of loss. The SFIP exclusion of earth movement is not applicable to the loss.

CONCLUSION

Based on the facts and analysis above, FEMA overturns the insurer's decision to deny coverage due to no general and temporary condition of flood.

FEMA requests the policyholder to cooperate with the insurer and provide them with information necessary to determine the building's size, quality, and valuation, including any past building appraisals performed for real estate or insurance purposes. The policyholder should provide the insurer with the claim determination under the homeowner's insurance policy from the subject event and any previous event, in particular from February 2019.¹⁵

If the homeowner's insurance policy also covers the insured property from the subject flood, the policyholder's claim may be subject to a proportional distribution of loss, as stated under the SFIP's other insurance clause.¹⁶

If the policyholder and the insurer do not agree on the value of loss, the policyholder should send directly to the insurer, a signed and sworn-to proof of loss with the documentation that supports the dollar amount requested. The adjustment of the claim remains under the direction of the insurer based on the merits of their findings, in accordance with all terms and conditions of the SFIP.

¹⁴ Jackson Sun, "Hardin County residents brace for damage left behind by receding flood waters," *available at* <https://www.jacksonsun.com/story/weather/2019/02/26/hardin-county-flooding-damage/2989909002/> (Feb. 26, 2019).

¹⁵ See SFIP (VII)(K).

¹⁶ See SFIP (VII)(C).